S.B. CIVIL WRIT PETITION NO.5050/2004
(Ram Lal Berwa Vs.Union of India & Ors.)

Date of Order :: 17th September 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.D.R.Gurjar, for the petitioner.
Mr.Rajesh Panwar, for the respondents.

The petitioner has filed this writ petition being aggrieved of denial of grant of disability pension after he was invalidated out of military service.

The petitioner earlier filed writ petition No.2254/2002 before this Court that was decided on 11.07.2002, after noticing the contention of the petitioner that the appeal preferred by him against refusal of disability pension was pending since 15.03.1997, with the following observations:

> "When the appeal of the petitioner is pending, it will be appropriate to direct the appellate authority to decide the appeal expeditiously, which is said to be pending from 15th March, 1997 before the appellate committee of the Ministry of Defence, Government of India, New Delhi. Therefore, it is directed that the appellate committee, Ministry of Defence, Government of India shall expeditiously decide the appeal of the petitioner, which has been filed against the rejection of the disability pension to the petitioner. The appellate committee is expected to decide the appeal within a period of three months from the date of the order placed before the appellate authority by the petitioner, if it has not been decided already.
>
> With the above direction, the writ petition is disposed of with liberty to the petitioner to approach this court in case the appeal of the petitioner is dismissed."

The petitioner has preferred this writ petition with the submissions that after passing of the order dated 11.07.2002, no decision of his appeal was conveyed, he served a notice and thereafter, filed contempt petition before this court being S.B. Civil Contempt Petition No.60/2003; and that after service of notice of the contempt petition, the appellate authority proceeded to reject his appeal under the impugned communication dated 02.07.2003 (Annex.10) stating that the disease in question was not attributable to or aggravated by military service, and therefore, he was not entitled for disability pension. The petitioner seeks to challenge the orders so passed by the authorities denying him disability element of pension.

The respondents have submitted a preliminary reply after service of show cause notice and have raised preliminary objection regarding competence of this writ petition before this court for want of territorial jurisdiction. The respondents have submitted that not a single proceeding in relation to the service affairs of the petitioner has taken place at Jodhpur or in any area that comes under the jurisdiction of this court.

Learned counsel for the respondents has pressed upon the said preliminary objection with the submissions that not even a part of cause of action has arisen within the jurisdiction of the principal seat of this Court at Jodhpur. Learned counsel

for the petitioner has attempted to assert on maintainability of this petition at Jodhpur with reference to the decision of learned Single Judge of this Court in the case of J.P.Singh & Ors. Vs. Inspecting Assistant Commissioner Income-tax (Assessment)-II,Jaipur: 1989 (1) RLR 118 wherein it has been observed that the cases arising out of the area of Jaipur Bench may be filed before the principal seat but not vice-versa.

The submission as sought to be made by the learned counsel for the petitioner cannot be accepted for the authoritative pronouncement in the case of Rajasthan High Court Advocates' Association Vs. Union of India and others: (2001) 2 SCC 294 wherein the Hon'ble Supreme Court has held in no uncertain terms that,-

> "The establishment of a permanent Bench at Jaipur and defining its territorial jurisdiction brought out bifurcation of the State of Rajasthan into two for the purpose of division of territorial jurisdiction of the High Court between the principal seat and the permanent Bench seat."

When an argument was advanced suggestive of the proposition that permanent Bench at Jaipur may not be treated having "exclusive jurisdiction" to hear the cases arising out of the specified districts, the Hon'ble Supreme Court negatived such contention thus:

> "It was submitted at the end by the learned counsel for the appellant that the Division Bench of the High Court in its impugned order has observed that the permanent Bench at

> Jaipur shall have "exclusive jurisdiction" to hear the cases arising out of the 11 specified districts and the High Court at Jodhpur shall not have jurisdiction to hear those cases which fall within the territorial jurisdiction of Jaipur Bench. He submitted that the use of word "exclusive" prefixed to "jurisdiction" is uncalled for. We find no substance in this contention as well. The purpose of the Presidential Order is to carve out and define territorial jurisdiction between the principal seat at Jodhpur and the permanent Bench seat at Jaipur. The cases are to be heard accordingly, unless the Chief Justice may exercise in his discretion the power vested in him by the proviso to para 2 of the Presidential Order. Clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court. Although the said clauses do not deal with principal seat or permanent Bench of any High Court but in our opinion, there is no reason why the principal underlying thereunder cannot be applied to the functioning of the bifurcated territorial jurisdiction between the principal seat and permanent Bench seat of any High Court."

In view of the law declared by the Hon'ble Supreme Court regarding division of territorial jurisdiction, the observations made in J.P.Singh's case (supra) stand totally eclipsed and cannot be considered any longer to be of good law.

According to the averments taken in the writ petition, the petitioner was lastly posted to 518, Army Supply Crops Battalion at Kota till his discharge from service on 30.06.1993. The petitioner has stated his particulars and registered address in this writ petition thus:

> “Mr.Ramlal Berwa S/o Shri Bholu Ram Berwa, aged 41 years, resident of village Sardar, Post Office Chandli,

Tehsil-Dewali, Distt. Tonk, Rajasthan."

The petitioner is admittedly residing within the territorial jurisdiction of Jaipur Bench of this Court. Even the place wherefrom he was discharged does not fall within the territorial jurisdiction of the principal seat at Jodhpur. For the purpose of this writ petition, even if it were considered that a part of cause of action has arisen at the present place of residence of the petitioner or at the place of his discharge, this petition cannot be maintained before the principal seat at Jodhpur.

However, having regard to the circumstances of the case, and for the respondents having appeared in response to show-cause notice, before passing final order in this matter it is considered appropriate to extend an opportunity to the petitioner to choose his option in view of the conclusion arrived at by this Court. The petitioner may do so within two weeks from today; and the matter be placed for appropriate orders on 03.10.2007.

It is of course made clear that this Court has not pronounced on merits; and no observation herein be taken as any expression on merits of the case of either of the parties.

(DINESH MAHESHWARI),J.

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